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Attorneys for Plaintiff
FIRST STATE INSURANCE COMPANY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FIRST STATE INSURANCE COMPANY, a Connecticut corporation,

Plaintiff,

v.

SAN DIEGO UNIFIED PORT DISTRICT, a public agency,

Defendant.

Case No. 2008cv1046 L RBB

JOINT MOTION TO CONTINUE EARLY NEUTRAL EVALUATION CONFERENCE; DECLARATION OF DAVID R. SINGER

Plaintiff First State Insurance Company ("Plaintiff") and defendant San Diego Unified Port District ("Defendant") respectfully request and hereby jointly move the Court for an order continuing the Early Neutral Evaluation Conference.

On July 11, 2008, the Court issued its Notice and Order for Early Neutral Evaluation Conference (the "Order") setting an Early Neutral Evaluation Conference (the "ENE Conference") for August 8, 2008 at 10:00 a.m. As explained in the attached Declaration of David R. Singer ("Singer Decl."), Plaintiff's counsel did not see a copy of the Order until July 31, 2008 and, thus, was unaware of the ENE Conference date until that time. *See* Singer Decl. As a result, plaintiffs' authorized representative with settlement authority, who resides outside of California, is unavailable to appear on August 8, 2008. Additionally, plaintiff has retained Dena Economou and Alan Posner of Karbal, Cohen, Economou, Silk & Dunne, LLC in Chicago, Illinois, to appear *pro hac vice* in this matter and to act as lead trial counsel ("Plaintiff's Chicago Counsel"). Plaintiff's Chicago Counsel are applying to appear in this matter *pro hac vice* on August 1, 2008. The parties agree it would further the goal of an amicable resolution if Plaintiff's Chicago Counsel were present at the ENE.

On July 31, 2008, after learning about the Order and the ENE Conference, Plaintiff's counsel immediately contacted Defendant's counsel to determine whether defendant would object to a short continuance of the ENE Conference. *See* Singer Decl. Defendant does not object to a short continuance. Plaintiff's counsel then contacted the Court and requested a new date for the ENE, but no dates were available until after August 21, 2008 (45 days after the answer was filed). *Id.*

Importantly, the parties have already been discussing the possibility of settlement, and are already working with a mediator, Timothy Gallagher, to assist in reaching a settlement. *See* Singer Decl. Mr. Gallagher has previously assisted the parties in resolving disputes in the past. As such, a short continuance of the ENE Conference will not cause a delay for the purposes of resolving this dispute amicably.

For the reasons set forth herein and the attached Declaration of David R. Singer, in the interest of promoting an amicable resolution of this matter, and with the parties' joint consent, the parties respectfully request that the Court continue the ENE Conference to the next available date after August 21, 2008.

Respectfully submitted,

July 31
Date: ~~August 1~~, 2008

HOGAN & HARTSON L.L.P.

By: ______________________
David Singer

Attorneys for Plaintiff
FIRST STATE INSURANCE COMPANY

July 31
Date: ~~August 1~~, 2008

BROWN & WINTERS

By: ______________________
Scott E. Patterson

Attorneys for Defendant
SAN DIEGO UNIFIED PORT DISTRICT

Declaration of David R. Singer

I, David R. Singer, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I am a partner at the law firm of Hogan & Hartson, LLP, attorneys of record for plaintiff First State Insurance Company ("Plaintiff"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to such facts under oath. I submit this declaration in support of the parties' Joint Motion to Continue the Early Neutral Evaluation Conference.

2. On July 11, 2008, the Court issued its Notice and Order for Early Neutral Evaluation Conference (the "Order") setting an Early Neutral Evaluation Conference for August 8, 2008 at 10:00 a.m. (the "ENE Conference") However, I did not see a copy of the Order until July 31, 2008 and, thus, was unaware of the ENE Conference date until that time.

3. On July 31, 2008, I reviewed the Court's docket to investigate whether an ENE Conference had been set in this case. At that point, I saw the Order and for the first time and immediately notified my client. As a result of our late notice of the Order, plaintiff's authorized representative with settlement authority, who resides outside of California, is unavailable to appear on August 8, 2008.

4. Plaintiff has also retained Dena Economou and Alan Posner of Karbal, Cohen, Economou, Silk & Dunne, LLC in Chicago, Illinois, to appear *pro hac vice* in this matter and to act as trial counsel ("Plaintiff's Chicago Counsel"). Plaintiff's Chicago Counsel are applying to appear in this matter *pro hac vice* on August 1, 2008. Plaintiff's Chicago Counsel is also not available on August 8th for the ENE Conference due to a scheduling conflict.

5. On July 31, 2008, as soon as I learned about the Order and the ENE Conference, I immediately contacted opposing counsel to determine whether

defendant would object to a short continuance of the ENE. I understand that Defendant does not object to a short continuance. I then immediately contacted the Court to determine whether the Court was available to conduct the ENE prior to August 21, 2008 (45 days after the answer was filed), but the Court did not have any availability.

6. I have been unable to determine why I did not receive the Court's email notification of the Order, but believe it was either due to an administrative error or technical problem at my office. I can assure the Court that measures have already been put in place to prevent this from re-occurring including, but not limited to, a review of my email filters as well as having our staff regularly monitor the Court's docket to ensure that our firm is receiving email notifications in a timely manner without technical difficulties.

7. The parties have already been discussing the possibility of settlement, and are already working with a mediator, Timothy Gallagher, to assist in reaching a settlement. Mr. Gallagher has previously assisted the parties in resolving disputes in the past. As such, a short continuance of the ENE Conference will not cause a delay for the purposes of resolving this dispute amicably.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 31st day of July, 2008 at Los Angeles, California.

David R. Singer

DECLARATION OF SERVICE

I, **Dolores Valencia**, declare as follows:

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is Hogan & Hartson LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067.

On **July 31, 2008**, I served the following documents described as:

JOINT MOTION TO CONTINUE EARLY NEUTRAL EVALUATION CONFERENCE; DECLARATION OF DAVID R. SINGER

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

William D. Brown, Esq.
Scott E. Patterson, Esq.
BROWN & WINTERS
120 Birmingham Drive, Suite 110
Cardiff-by-the-Sea, CA 92007
Telephone: (760) 633-4485
Facsimile: (760) 633-4427

[ ] BY MAIL I am readily familiar with the firm's practice regarding collection and processing of correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] **BY ELECTRONIC SERVICE** I caused said document to be e-filed to the e-mail addressed.

[ ] **BY FACSIMILE** I caused said document to be transmitted by facsimile transmission to the number indicated after the address(es) noted above.

[ ] **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the addressee(s) as stated above.

[ ] **BY OVERNIGHT COURIER** I caused such envelope to be delivered to **UPS** for overnight courier service to the offices of the addressee(s) listed on the attached service list.

[ ] **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on **July 31, 2008** at Los Angeles, California.

Dolores Valencia
Name

Signature